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C.R.P.(PD).No.2591 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.11.2021

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

C.R.P.(PD).No.2591 of 2021

and

C.M.P.No.19208 of 2021

M.Kumar

.. Petitioner

Vs.

1.P.Chandrika

2.K.Dhanalakshmi

3.B.Sundaramabal

.. Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, praying to set aside the fair and decreetal order dated 09.09.2021 made in I.A.No.1 of 2021 in I.A.No.139 of 2018 in O.S.No.429 of 2012 on the file of the II Additional Subordinate Judge, Erode by allowing this Civil Revision Petition.

For Petitioner : Mr.M.Guruprasad



C.R.P.(PD).No.2591 of 2021

ORDER

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The suit was instituted by the plaintiffs seeking a declaration that the plaintiffs are the absolute owners of the suit property of an extent of 914 sq.ft situate in two survey numbers viz., S.Nos.118 and 124 of Karungalpalayam within Erode Municipal limits, a mandatory injunction to remove the encroachment marked as “AMNO” in the plaint plan, a permanent injunction restraining the defendant from interfering with the plaintiffs' peaceful possession and enjoyment of the property and for costs.

2. The suit was filed in the year 2012. Thereafter, there was an amendment of the plaint and the area of encroachment was given as 482 sq.ft. The defendant filed the written statement in the year 2013 claiming that there has been no encroachment of plaintiffs' property and that the plaintiffs are not entitled to the suit relief.

3. An application for appointment of Commissioner in I.A.No.869 of 2012 was filed by the plaintiffs. A Commissioner was appointed and he had



C.R.P.(PD).No.2591 of 2021

filed a report on 29.01.2013. This started the spate of applications for appointment of Commissioner by the defendant. An application in I.A.No.74 of 2014 seeking appointment of another Commissioner with a direction to measure the property with the help of Surveyor was filed by the defendant. The said application was allowed and another report was filed.

4. Not satisfied with that, another application in I.A.No.139 of 2018 was filed by the defendant seeking a direction to the Commissioner to re-visit the suit property along with the qualified and competent Surveyor to measure the property of the plaintiffs and the defendant. The said application was also allowed. Pursuant to the same, Commissioner visited the property with two Surveyors and filed a report along with the plans given by the Surveyors. There the Commissioner has specifically pointed out that the area of encroachment was 452 sq.ft.

5. Undaunted the defendant filed the third application in I.A.No.1 of 2021 seeking to direct the Commissioner to re-visit the property and measure the same with the help of Surveyor, on the basis of the title deeds



C.R.P.(PD).No.2591 of 2021

and revenue documents. The main contention for seeking such a re-visit was that the Surveyors have given two different reports and the exact area of encroachment is not given. It is also contended that only if the entire area of 3656 sq.ft in S.Nos.118 and 124 is measured, the actual encroachment could be found out. Fortunately, the learned Judge saw through the game of the defendant and dismissed the application.

6. I have heard Mr.M.Guruprasad, learned counsel appearing for the petitioner.

7. Mr.Guruprasad would vehemently contend that when the Commissioner visited the suit property in the year 2018 the Surveyors have not given proper plans. Therefore the exact area of encroachment is not given by the Commissioner. Hence, a re-visit is required.

8. I am unable to countenance the submission of the counsel for the petitioner. There are already two reports of the Commissioner. Both the reports have been filed after taking help of the qualified Surveyors. In the



C.R.P.(PD).No.2591 of 2021

second report filed pursuant to the order in I.A.No.139 of 2018, the Commissioner has clearly stated the area of encroachment and plan has also been filed showing the exact area of encroachment. The defendant has also filed his objections to the same.

9. If it is the case of the defendant that the Commissioner's report is erroneous or does not reflect true position, it is open to him to lead evidence and demonstrate that the Commissioner's report is wrong. The intention of the defendant appears to be only to drag on the proceedings knowing fully well that he would ultimately suffer a decree in the suit. The very fact that three applications have been filed for re-visit shows the intention of the defendant.

10. Hence, I do not see any merits in this Revision and the Revision fails and it is accordingly **dismissed**. No costs. Consequently, the connected miscellaneous petition is closed.



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C.R.P.(PD).No.2591 of 2021

R.SUBRAMANIAN, J.

dsa

11. The trial Court is directed to dispose of the suit within a period of six (6) months from the date of receipt of either a web copy or certified copy of this order and report such disposal to the Registrar Judicial of this Court.

30.11.2021

dsa

Internet :Yes

Index : No

Speaking order

To

The II Additional Subordinate Judge, Erode.

C.R.P.(PD).No.2591 of 2021